

**DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS**

Proposed Readoption with Amendments: N.J.A.C. 13:8

Proposed New Rules: N.J.A.C. 13:8-2.1, 2.2 and 2.3

Proposed Repeals: N.J.A.C. 13:8 Appendices A, B and C

Display of Official Posters of the Division on Civil Rights

Authorized By: J. Frank Vespa-Papaleo, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-8(g); 10:5-6 and 10:5-12; and 34:11B-6 and 16.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-394.

Submit comments by December 16, 2005 to:

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New Jersey Division on Civil Rights
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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49, and the New Jersey Family Leave Act (FLA), N.J.S.A. 34:11B-1 to 16. Pursuant to N.J.S.A. 52:14B-5.1c, the Division's rules concerning Display of Official Posters of the Division on Civil Rights, N.J.A.C. 13:8, expire on March 17, 2006. The Division has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, the Division proposes certain amendments to N.J.A.C. 13:8 to address how covered entities may obtain the relevant LAD posters from the Division. The Division also proposes new rules concerning the display of the Division's official FLA poster.

The LAD provides that it is unlawful for an entity whose activities are included within the scope of the act to refuse to post or display notices concerning the rights or responsibilities of persons affected by the act as the Attorney General, through the Division, may by regulation require. N.J.S.A. 10:5-12.j. In fulfillment of this statutory requirement, the Division has maintained official posters to provide notice to the public regarding unlawful discrimination in the areas of employment, housing, and public accommodations under the LAD, which entities covered by the LAD are

required to display. Currently, the official posters are included as appendices to the rules. Upon readoption, the Division proposes amendments to provide that the official posters are available for downloading and printing from the Division's website or from any office of the Division. Such a mechanism allows for covered entities to have immediate access to the posters in order to comply with these rules. It also allows for the Division to modify the posters with greater ease when necessary because of changes in the LAD or in the contact information for the Division's offices that is contained on the posters. The Division proposes that whenever it modifies a poster, it will issue and publicize a public notice to alert covered entities that a revised poster has been published and is available from the Division. Additionally, since the proposed amendments allow covered entities to print the posters themselves, further amendments are proposed to ensure that the displayed posters and text are large enough to be easily read and contain fully legible text. The appendices to the rules would be deleted.

The FLA also provides that employers covered by the FLA shall display conspicuous notice of its employees' rights and obligations under the FLA. N.J.S.A. 34:11B-6. The Division has an official poster outlining these rights and obligations. Consequently, the Division proposes new rules, N.J.A.C. 13:8-2.1 through 2.3, to address the display of the Division's FLA poster by employers covered by the FLA. The proposed new rules provide, similar to the rules for LAD posters, that employers covered by the FLA shall display the official FLA poster in places easily visible to all employees, that the poster is available on the Division's website or from its offices, that the displayed poster be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read, and that the failure to comply with the display requirement shall constitute a violation of N.J.S.A. 34:11B-6.

Upon readoption, the Division proposes amending the heading of Subchapter 1 to be "Law Against Discrimination Posters." The proposed amendment to N.J.A.C. 13:8-1.1 would further reflect this change by providing that the definitions set forth in the LAD apply to this subchapter. The rules proposed for readoption provide that: (1) employers and labor organizations must display the official Division poster that governs discrimination in employment, N.J.A.C. 13:8-1.2; (2) individuals or entities engaged in the business of selling or renting real estate must display the official Division poster that governs discrimination in housing, N.J.A.C. 13:8-1.3; and (3) owners and operators of places of public accommodation must display the official Division poster that governs discrimination in places of public accommodation, N.J.A.C. 13:8-1.4. The Division proposes amending N.J.A.C. 13:8-1.2, 1.3 and 1.4 each to reflect that the official poster is available on the Division's website and from any office of the Division. Each of these rules would also be amended to require that the displayed posters be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read. Each of the rules would further be amended to provide that whenever a poster is modified, the Division shall issue and publicize a public notice to alert covered entities that a revised poster has been published and is available from the Division. Additionally, the Division proposes amending N.J.A.C. 13:8-1.5 to reflect that it is the failure to comply with this subchapter that will constitute a violation of the LAD.

The Division proposes heading Subchapter 2, currently reserved, the "Family Leave Act Poster." The requirements in Subchapter 2 for display of the FLA poster would mirror the requirements in Subchapter 1 for display of the LAD posters. Proposed new rule N.J.A.C. 13:8-2.1

would provide that the definitions set forth in the FLA shall apply to this subchapter. Proposed new rule N.J.A.C. 13:8-2.2 would require all employers covered by the FLA to display the FLA poster, which is available on the Division's website and at any office of the Division. Proposed N.J.A.C. 13:8-2.3 would provide that failure to comply with the subchapter would constitute a violation of N.J.S.A. 34:11B-6.

As the Division has provided a 60-day comment period on the notice for this proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division believes that the rules proposed for readoption with amendments as well as the proposal of the new rules will have a positive social impact. The posters required to be displayed under the rules are a simple and economical means of reaching large segments of the population to promote public awareness of and compliance with the provisions of the LAD and FLA. By highlighting, for both the public and the regulated community, the rights and responsibilities associated with the two laws, the poster requirements will enhance the Division's prevention and enforcement efforts and foster the primary goal of the LAD, which is to prevent and eradicate unlawful discrimination. Further, the contact information for the Division's offices contained on the posters will help to facilitate inquiries to the Division by the regulated community and by members of the general public. For these reasons, the rules proposed for readoption with amendments and proposed new rules will further the public interest.

Economic Impact

The Division does not anticipate that the rules proposed for readoption with amendments or proposed new rules will have any economic impact on covered employers and labor organizations, covered persons selling, leasing or financing real property, or covered owners and operators of places of public accommodation. Since the Division will assume the cost of formulating, printing and distributing the posters, and since the posters are available free-of-charge from the Division's website or its offices, covered individuals and entities will be able to comply with the rules proposed for readoption with amendments and new rules without incurring any out-of-pocket costs and with only an incidental administrative expenditure of time. The proposed amendments should have a positive economic effect on the Division, since to the extent covered entities download the posters from the Division's website, it will reduce the agency's administrative costs in printing and distributing the posters.

Federal Standards Statement

The rules proposed for readoption with amendments and proposed new rules relate to compliance with the notice posting requirements in the LAD and FLA. Accordingly, the rules proposed for readoption with amendments and proposed new rules are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. However, the Division's rules are similar to Federal regulations that require the posting of different notices under various Federal laws.

Accordingly, some persons and entities covered by the LAD's and FLA's posting requirements are also required to post notices regarding unlawful discrimination or family leave under various Federal laws.

Specifically, 29 CFR §§1601.30(a) requires employers and labor organizations, as defined by Title VII of the Civil Rights Act and by the Americans With Disabilities Act (ADA), to display posters which advise the public of the pertinent provisions of these Federal laws. Similarly, 24 CFR §§110.10 and §§110.25, promulgated pursuant to the Fair Housing Act, impose an obligation on persons who rent or sell real estate to display posters advising that it is a violation of Federal law to engage in unlawful housing discrimination based on race, color, religion, sex, national origin, handicap or familial status. Moreover, Federal regulations require certain state and local entities to disseminate information about the ADA. These regulations include the posting of notices as one of several suggested means of meeting this requirement. 28 CFR §§35.106. Further, the Federal Family and Medical Leave Act (FMLA) and its implementing regulations require that employers covered by the FMLA post notices explaining the act's provisions and providing information concerning the filing of complaints. 29 U.S.C. §§ 2619; 29 CFR §§825.300.

The rules proposed for readoption with amendments and new rules do not unnecessarily exceed or duplicate such Federal regulations. Instead, the rules articulate requirements to display posters that explain provisions of the LAD and FLA. Accordingly, the Division's rules regarding the display of official Division posters continue to be necessary to further the statutory mandate to prevent and eliminate unlawful discrimination that violates the LAD and to fulfill the statutory notice requirements of the FLA. Although the requirement to display Division posters may reach some individuals and entities that are also covered by corresponding Federal notice requirements described above, the LAD and FLA cover more individuals and entities under their respective definitions of "employer" than their Federal counterparts. Moreover, there are significant differences in the coverage of Federal and State laws that are reflected in the contents of the Division's official posters.

For example, the LAD proscribes discrimination on bases not covered by Federal discrimination laws, such as marital status, sexual orientation, liability for military service, atypical cellular or blood trait and genetic information. Likewise, the LAD's definition of "disability" is significantly broader than the ADA's definition of "disability." In light of these distinctions, the contents of the Division's LAD posters do not duplicate Federal posters. Similarly, there are significant differences between the FMLA and FLA, including the definition of covered employers and the permitted reasons for taking leave, that call for the posting of notices under each law. Therefore, the notice provided by the Division's posters is not a superfluous reiteration of Federal civil rights laws and do not unnecessarily exceed or duplicate Federal regulation of the same activities. Instead, the notice requirements serve purposes unique to the LAD and FLA.

Jobs Impact

The Division does not anticipate that the rules proposed for readoption with amendments and proposed new rules will have any impact on the number of jobs in this State.

Agriculture Industry Impact

The Division does not anticipate that the rules proposed for readoption with amendments or proposed new rules will have any impact on the agriculture industry.

Regulatory Flexibility Analysis

Neither the rules proposed for readoption with amendments nor the proposed new rules will impose any reporting or recordkeeping requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are small businesses that are employers, housing providers or owners of places of public accommodation that would be required to comply with these rules by posting the required posters. However, since the Division assumes the cost of formulating, printing and distributing the posters, and since the posters are available for downloading free-of-charge from the Division's website, small businesses will be able to comply with the rules proposed for readoption with amendments and the proposed new rules without incurring any out-of-pocket costs and only a minimal expenditure of time.

Smart Growth Impact

The Division does not anticipate that either the rules proposed for readoption with amendments or the proposed new rules will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:8.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:8 Appendices A, B and C.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. [GENERAL PROVISIONS] LAW AGAINST DISCRIMINATION POSTERS

13:8-1.1 Definitions

The definitions set forth in N.J.S.A. 10:5-1 et seq. shall apply to this [chapter] **subchapter**.

13:8-1.2 Display of employment poster

All labor organizations, employment agencies and employers of employees covered by the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) shall display the official employment poster of the Division[, which is set forth in subchapter Appendix A, incorporated herein by reference,] in

places easily visible to all employees and applicants for employment. **The official employment poster of the Division is available for downloading and printing on the Division's website, www.njcivilrights.org, or at any of the Division's offices. The poster shall be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with N.J.A.C. 13:1E-4.4 to alert covered entities that a revised poster has been published and is available from the Division.**

13:8-1.3 Display of housing poster

(a) All real estate brokers and all persons who engage in the business of selling or renting their own real property shall display the official housing poster of the Division[, which is set forth in subchapter Appendix B, incorporated herein by reference,] in places easily visible to all prospective tenants and purchasers. **The official housing poster of the Division is available for downloading and printing on the Division's website, www.njcivilrights.org, or at any of the Division's offices. The poster shall be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with N.J.A.C. 13:1E-4.4 to alert covered entities that a revised poster has been published and is available from the Division.**

(b) (No change.)

13:8-1.4 Display of public accommodation poster

All places of public accommodation shall display the official public accommodation poster of the Division[, which is set forth in subchapter Appendix C, incorporated herein by reference,] in places easily visible to all persons seeking or using the accommodations. **The official public accommodations poster of the Division is available for downloading and printing on the Division's website, www.njcivilrights.org, or at any of the Division's offices. The poster shall be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with N.J.A.C. 13:1E-4.4 to alert covered entities that a revised poster has been published and is available from the Division.**

13:8-1.5 Violation

Failure to comply with this [Chapter] **subchapter** shall constitute a violation of N.J.S.A. [10:5-12(j)] 10:5-12.j.

SUBCHAPTER 2. [(RESERVED)] **FAMILY LEAVE ACT POSTER**

13:8-2.1 Definitions

The definitions set forth in N.J.S.A. 34:11B-1 et seq. shall apply to this subchapter.

13:8-2.2 Display of Family Leave Act poster

All employers covered by the Family Leave Act (N.J.S.A. 34:11B-1 et seq.), whether or not they have any eligible employees under the act, shall display the official Family Leave Act poster of the Division in places easily visible to all employees. The official Family Leave Act poster of the Division is available for downloading and printing on the Division's website, www.njcivilrights.org, or at any of the Division's offices. The poster shall be printed on legal size paper (8 ½ by 14 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with N.J.A.C. 13:1E-4.4 to alert covered employers that a revised poster has been published and is available from the Division.

13:8-2.3 Violation

Failure to comply with this subchapter shall constitute a violation of N.J.S.A. 34:11B-6.